

Of Counsel:
KAWAMURA LAW OFFICE, LLC.
Attorneys at Law

ROBERT D. KAWAMURA 4537-0
350 Ward Avenue, Suite 106
Honolulu, Hawaii 96814
Telephone: (808) 225-4200
Facsimile: (808) 564-0850
Email: AttorneysHawaii@aol.com
Website: AttorneysHawaii.com

Attorneys for Plaintiffs
LIANNA MCCURDY and DANIEL VERDERAME

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2019 JUL -8 PM 12:56

N. ANAYA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LIANNA MCCURDY and DANIEL)	Civil No. 19-1-1066-07	DEO
VERDERAME,)	(Motor Vehicle Tort)	
)		
Plaintiffs,)	COMPLAINT; DEMAND FOR JURY	
)	TRIAL; SUMMONS	
vs.)		
)		
ALINS SUMANG; SHELDON WATTS;)		
CITY AND COUNTY OF HONOLULU;)		
JOHN DOES 1-10; JANE DOES 1-10;)		
DOE CORPORATIONS 1-10; DOE)		
PARTNERSHIPS 1-10; DOE JOINT)		
VENTURERS 1-10; DOE LIMITED)		
LIABILITY ENTITIES 1-10; DOE)		
NON-PROFIT ENTITIES 1-10; DOE)		
GOVERNMENTAL ENTITIES 1-10; DOE)		
UNINCORPORATED ENTITIES 1-10;)		
and OTHER DOE ENTITIES 1-10,)		
)		
Defendants.)		
)		

COMPLAINT

SUMMONS
DENIED
LEGAL DOCUMENTS BR.

X COPY

Plaintiffs LIANNA MCCURDY and DANIEL VERDERAME, by and through their attorneys, Kawamura Law Office, LLC., bring this complaint against Defendants above-named, and in doing so, allege and aver as follows:

COUNT I - NEGLIGENCE

1. Plaintiff LIANNA MCCURDY is and was at all relevant times herein a resident of the City & County Honolulu, State of Hawaii ("Plaintiff MCCURDY").

2. Plaintiff DANIEL VERDERAME is and was at all relevant times herein a resident of the City & County Honolulu, State of Hawaii ("Plaintiff VERDERAME").

3. Defendant ALINS SUMANG is and was at all relevant times herein a resident of the City & County of Honolulu, State of Hawaii ("Defendant SUMANG").

4. Defendant SHELDON WATTS is and was at all relevant times herein a resident of the City and County of Honolulu, Hawaii and at all relevant times herein was working in the course and scope of his employment as a Police Officer with the Honolulu Police Department ("HPD"), the principal law enforcement agency within the City and County of Honolulu, State of Hawaii. ("Officer WATTS").

5. Defendant CITY & COUNTY OF HONOLULU is and was at all relevant times hereto a municipal corporation within the State of Hawaii ("Defendant CITY"). At all relevant times

herein, Defendant CITY employed Officer WATTS as a police officer in the Honolulu Police Department whose acts and omissions as alleged herein caused and/or contributed to Plaintiffs' injuries and damages alleged herein and did so while acting within the course and scope of his employment as a police officer with Defendant CITY.

6. There existed a master-servant relationship between Officer WATTS and Defendant CITY. As a direct and proximate result of said officer's acts and omissions as alleged herein, Plaintiffs have suffered injuries and damages as set forth herein. As a result thereof, the liability of said officer is imputed to Defendant CITY and Defendant CITY is liable to Plaintiffs pursuant to the doctrine of Respondeat Superior.

7. Defendants JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE JOINT VENTURERS 1-10, DOE LIMITED LIABILITY ENTITIES 1-10, DOE NON-PROFIT ENTITIES 1-10, DOE GOVERNMENTAL ENTITIES 1-10, DOE UNINCORPORATED ENTITIES 1-10, and OTHER DOE ENTITIES 1-10 (collectively referred to as "Doe Defendants") are persons, corporations, partnerships, limited liability companies, business entities, non-profit entities, and/or governmental entities who acted in a negligent, wrongful or tortious manner which proximately caused or contributed to injuries and damages sustained by Plaintiffs. Plaintiffs have

been unable to ascertain the names and identities of the above-named Doe Defendants from the investigation that has been conducted to date. Accordingly, Plaintiffs have sued the unidentified Doe Defendants herein under fictitious names pursuant to Rule 17(d) of the Hawaii Rules of Civil Procedure, and Plaintiffs will substitute the true names, identities, capacities, acts and/or admissions of the Doe Defendants when the same are ascertained.

8. All of the acts and omissions complained of herein occurred within the City & County of Honolulu, State of Hawaii.

9. Plaintiff MCCURDY has met all the requirements of Hawaii No-Fault Law, including but not limited to H.R.S. Section 431-10C-306 (b) (2) & (4), in bringing this suit.

10. Plaintiff VERDERAME has met all the requirements of Hawaii No-Fault Law, including but not limited to H.R.S. Section 431-10C-306 (b) (4), in bringing this suit.

11. Plaintiffs contend that the amount of each of their damages as alleged in this complaint fall within the jurisdictional requirements of this Honorable Court, exclusive of interest, attorney's fees and costs.

12. On January 28, 2019, Defendant SUMANG had been drinking and then began negligently operating a Ford F-150 Truck ("the Truck") in the City and County of Honolulu losing control

of the Truck causing it to collide into some parked cars on Amana and Makaloa streets. The Honolulu Police Department ("HPD") was notified that the Truck was fleeing the scene of one of the collisions on Makaloa Street and Officer WATTS began looking for the Truck. Officer WATTS located a truck matching the witness description on nearby Rycroft Street and began pursuing it westbound on Rycroft Street and further pursued it as it turned southbound onto Pensacola Street before he lost sight of the Truck. "Driving down Pensacola, I noticed a Ford truck turn in front of us. Didn't look like he stopped at any stop signs," Witness Guy Ogata said. "Shortly after, there was a police that was following him. No sirens on - I didn't think he was trying to pull him over." Officer WATTS began to look for the truck and he again found it this time now westbound on Kona Street. According to witnesses Defendant SUMANG sped down Kona Street followed by a police officer with lights on but no siren sounding. HPD Chief Susan Ballard said, "We know **he had his pilot light on** but as far as his flashing light, that is still under investigation. **The siren was on at one point chirping on and off** that is all part of the investigation but generally when you lose sight of a suspect vehicle you turn off your lights and siren." A witness said, "There are speed bumps that were totally ignored, if I had put a number on it, it would be eighty because they literally disappeared by the time I backed up and

looked the other way." Officer WATTS pursued the Truck as it sped westbound down Kona Street and further pursued it as it then sped southbound down Piikoi Street and he attempted to catch up to it. The Truck made a right turn heading westbound on Ala Moana Boulevard at a high rate of speed with Officer WATTS in pursuit but he got stuck behind a fire truck towing a boat which was responding to another emergency with the lights and siren on. Officer WATTS reported *"Everybody was stopping and moving over to give way to the fire truck, it made it difficult to maneuver through the traffic."* The Truck was weaving in and out of traffic. Officer WATTS lost sight of the Truck. According to HPD Chief Ballard, *"The officer was unable to keep up with the truck in the moving traffic."* Chief Ballard further said, *"multiple officers then responded to help locate the truck and that's when the driver plowed into the crowd of pedestrians and then hit another vehicle stopped at a stoplight."*

13. At all relevant times herein, in an effort to evade Officer WATTS and possibly other officers, Defendant SUMANG attempted to make a sudden right turn onto Kamakee Street in Kakaako when he lost control of the Truck veering across three lanes and climbed the island in front of Kamakee Street where the Truck violently slammed into eight (8) pedestrians

including Plaintiffs, a light pole, severing the pole and then plowing into a pickup truck.

14. HPD Lt. James Slayter told the Star Advertiser that the truck had hit other cars several blocks away and then sped across three lanes of traffic in an attempt to turn onto Kamakee Street.

15. The accident occurred at approximately 6:20 p.m. on January 28, 2019.

16. At all relevant times herein, Plaintiffs were hosting two friends Casimir Pokorny and his girlfriend, both visiting from Pennsylvania, and they were all waiting to cross the street when the Truck plowed into them. Casimir was Plaintiff VERDERAME'S best friend, was just 26 years old and he was tragically killed in the accident.

17. As a direct and proximate result of the negligence of Defendant SUMANG as alleged herein, Plaintiffs suffered severe and permanent injuries, have incurred medical, psychiatric and/or psychological and rehabilitative expenses, has suffered mental and emotional distress and have lost income and earning capacity, and suffered other damages.

18. As a further and direct proximate result of the negligence of Defendant SUMANG as alleged herein, three individuals were killed and at least three other individuals suffered severe injuries.

19. At one of Defendant SUMANG's criminal hearings, HPD Officer Brandon Ohta testified that the engine computer on Sumang's truck recorded the vehicle's speed at 74-76 mph before impact. Officer Jason Tanaka testified that he calculated the truck's speed at 51 mph when it hit the light pole and pedestrians. The speed limit for the subject portion of Ala Moana Boulevard is 35 mph.

20. At a criminal hearing for Defendant SUMANG, Investigating Police Officer Suaesi Tuimaunei testified that he found a bottle of vodka in the truck Defendant SUMANG was driving and that he was belligerent and cursed at emergency workers. Defendant SUMANG told emergency responders "*Fuck you, I don't give a Fuck.*" Court documents indicated that Defendant SUMANG smelled strongly of alcohol after the crash.

21. In 2009, Defendant SUMANG was charged with grand larceny, aiding and abetting burglary, receiving stolen property and aiding and abetting malicious mischief involving the burglary of the Imperial Bar in Palau.

22. On December 23, 2015, Defendant SUMANG was found guilty of criminal property damage in the City and County of Honolulu.

23. On March 30, 2017, Defendant SUMANG was placed on probation for a 2017 felony terroristic threatening conviction in the City and County of Honolulu.

24. On January 28, 2019, Defendant SUMANG had prior traffic infractions including driving without a license and jaywalking in the City and County of Honolulu.

25. At all relevant times herein, Defendant SUMANG owed a duty to Plaintiffs to operate the Truck in a reasonably safe and prudent manner observing all traffic laws and traffic conditions. Defendant SUMANG breached this duty when he negligently operated his vehicle as alleged herein, which negligence includes but is not limited to driving under the influence of alcohol, speeding and attempting to evade the officers' pursuit.

26. As a direct and proximate result of the negligence of Defendant SUMANG as alleged herein and to be discovered in this case, Plaintiffs each suffered severe, permanent and disfiguring injuries, have incurred medical, psychiatric, psychological and rehabilitative expenses, have suffered mental and emotional distress and have lost income and earning capacity, and suffered other damages, entitling Plaintiffs to a judgment against Defendant SUMANG in amounts to be proven at trial.

COUNT II - NEGLIGENT PURSUIT

27. Plaintiffs reallege and incorporate herein by reference all of the previous paragraphs of this complaint as if fully set forth herein.

28. At all relevant times herein, The Honolulu Police Department had a "MOTOR VEHICLE PURSUITS" policy in place and effect.

29. According to said policy, its purpose is to "assist its officers in the safe performance of their duties and to protect the public, . . ."

30. According to Section I.A. of said policy, a "Motor Vehicle Pursuit" is "An effort by an officer operating a motor vehicle to stop another motor vehicle when an occupant of that vehicle is a suspected violator of the law and the driver of that vehicle appears to be ignoring lawful commands to stop or to be fleeing from the police." Defendant SUMANG fled the scene of at least two (2) motor vehicle collisions, ran stop signs, sped away and failed to stop despite an officer following him with his lights on and siren chirping knowing that he had just collided into parked vehicles.

31. According to said Section II of said policy, some "GENERAL CONSIDERATIONS" to consider in initiating a pursuit are that:

- A. Motor Vehicle pursuits may be hazardous because of the speeds and intricate maneuvers involved.
- B. Therefore, in each decision to engage in a motor vehicle pursuit, the need to apprehend the suspect must be weighed against the need to avoid harm to persons and property. In general, the greater the risk of harm to the officer, the suspect, or the public in the pursuit, the less justification there is for the pursuit.

32. According to said Section III of said policy, under "INITIATION OF PURSUIT", *"The blue light and siren shall be used to command a vehicle to stop before a pursuit is initiated."* According to HPD Chief Ballard, Officer WATTS' pilot light was on but he only chirped his siren.

33. According to Section III. A. of said policy, under "INITIATION OF PURSUIT", *"A pursuit may be initiated with an authorized emergency vehicle if an officer directs a driver to stop but that driver exhibits intentions of eluding the officer by being evasive."* Officer WATTS had his pilot light on but only occasionally chirped his siren at Defendant SUMANG and Defendant sped away down various streets.

34. According to Section III. B. of said policy, under "INITIATION OF PURSUIT", *"When an officer initiates a motor vehicle pursuit, the officer shall continuously use the flashing blue light and siren."* Defendant WATTS had his light on but not flashing and only occasionally chirped his siren. HPD Chief Ballard stated, "We know he had his **pilot light on** but as far as his flashing light, that is still under investigation. **The siren was on at one point chirping on and off** that is all part of the investigation but generally when you lose sight of a suspect you turn off the lights and siren."

35. According to Section IV. C. of said policy, under "SUPERVISORY RESPONSIBILITIES", *"When continuing the pursuit becomes dangerous, it shall be the responsibility of any field supervisor to terminate it."* Defendant SUMANG was speeding down Kona Street, Piikoi Street and on Ala Moana Boulevard and was being pursued by Officer WATTS and possibly other officers joined in after Officer WATTS lost sight of him in the heavy traffic. It is unclear if the pursuit was terminated; if it was, it was terminated too late when Defendant SUMANG was already speeding down Ala Moana Boulevard into the heavily congested Kakaako area.

36. At all relevant times herein, HPD Chief Ballard said, *"The officer eventually observed the truck turn onto Ala Moana Boulevard at a high rate of speed and weave in and out of traffic. The officer was unable to keep up with the truck in moving traffic."* She said that multiple officers then responded to help locate the truck and that's when the driver plowed into the crowd of pedestrians waiting to cross the street and then hit another vehicle stopped at a stoplight.

37. Officer WATTS and possibly other officers were in pursuit of Defendant SUMANG as HPD Chief Susan Ballard said, *"The siren was on at one point chirping on and off that is all part of the investigation but generally when you lose sight of a suspect vehicle you turn off your lights and siren."*

38. According to Section VI. A. of said policy, under "TERMINATION OF PURSUIT", "A pursuit shall be terminated under any one of the following conditions:

1. When the risk created by the pursuit is unreasonable given the nature of the offense for which the suspect is being pursued and the conditions under which the pursuit must be conducted.

A. An assessment of the risks created by the pursuit should include: the speeds involved, the volume of traffic on the road, the amount and kind of pedestrian traffic in the area, . . . running a red light or stop sign, time of day . . ."

39. The risk created by the pursuit was unreasonable given that Defendant SUMANG had initially only been involved in property damage collisions involving no injuries but then began speeding down Kona Street, Piikoi Street and Ala Moana Boulevard after Officer WATTS began pursuing him with his lights on and chirping siren during a time and place where there is heavy vehicular and pedestrian traffic in the area.

40. At no time did Officer WATTS use his flashing lights and continuous siren when he followed or pursued Defendant SUMANG, in contravention of the HPD Motor Vehicle Pursuits Policy.

41. The HPD Motor Vehicle Pursuits Policy does not authorize chirping of the siren as an acceptable method of pulling over a suspect or an acceptable protocol when pursuing a suspect.

42. Officer WATTS should have attempted to pull over Defendant SUMANG with his lights flashing and continuous siren immediately after the vehicle collisions instead of simply following him up and down several streets with his lights simply on and occasionally chirping his siren, causing Defendant SUMANG to not pull over. Officer WATTS pursuit in this fashion only made Defendant SUMANG believe he could keep driving until he came upon an opportunity to evade the pursuit, which he attempted, by making a sudden turn at a high rate of speed resulting in him losing control of the Truck.

43. At all relevant times herein, the officers including Defendant WATTS, owed a duty to Plaintiffs and the other pedestrians to either pull over Defendant SUMANG and/or to timely terminate the pursuit given the circumstances such as the heavy vehicular and pedestrian traffic in the area at the time, especially in light of the fact that Defendant SUMANG was speeding dangerously down Kona Street, Piikoi Street and then down Ala Moana Boulevard despite being pursued by Officer WATTS.

44. The officers breached this duty when they failed to pull over Defendant SUMANG immediately following the vehicle collisions on Amana and Makaloa streets and instead chose to pursue him down many streets without flashing lights or continuous siren pushing him into the heavily congested Kakaako area causing him to attempt the sudden right turn onto Kamakee

Street when he lost control of the Truck. In his pursuit of Defendant SUMANG, Officer WATTS should have utilized his flashing blue lights and continuous siren immediately after Defendant SUMANG fled the vehicle collisions to pull him over as required by the HPD Motor Vehicle Pursuits Policy. If Defendant SUMANG did not then pull over as he was approaching the busy Kakaako area, the pursuit should have been terminated.

45. As a direct and proximate result of the negligence of Officer WATTS and possibly other individuals including officers yet to be identified, as alleged herein and to be discovered in this case, Plaintiffs each suffered severe, permanent and disfiguring injuries, have incurred medical, psychiatric, psychological and rehabilitative expenses, have suffered mental and emotional distress and have lost income and earning capacity, and suffered other damages, entitling Plaintiffs to a judgment against Officer WATTS and Defendant CITY in amounts to be proven at trial.

COUNT III - NEGLIGENT ENTRUSTMENT

46. Plaintiffs reallege and incorporate herein by reference all of the previous paragraphs of this complaint as if fully set forth herein.

47. At the time of the crash, Defendant SUMANG had prior traffic infractions including driving without a license and jaywalking in the City and County of Honolulu. He was also

on probation for a 2017 felony terroristic threatening conviction. In 2015, He was also found guilty of criminal property damage in the City and County of Honolulu and in 2009 he had been charged with grand larceny, aiding and abetting burglary, receiving stolen property and aiding and abetting malicious mischief involving the burglary of the Imperial Bar in Palau.

48. At all relevant times herein, Defendant SUMANG was operating the Truck which was registered to a yet to be identified company on the island of Oahu. The company did not report the Truck as stolen at the time of the accident.

49. At all relevant times herein, the registered owner of the Truck knew or should have known that Defendant SUMANG was not a responsible or law abiding citizen and/or was a reckless individual and that he had prior motor vehicle infractions including driving without a license, and given this history, that his careless, reckless and irresponsible behavior was reasonably foreseeable to continue and therefore said owner should have taken precautions to avoid permitting Defendant SUMANG to have access to the Truck.

50. At all relevant times herein, the registered owner of the Truck owed a duty to not permit Defendant SUMANG to operate the Truck.

51. At all relevant times herein, the registered owner of the Truck breached its duty when it negligently entrusted the Truck to Defendant SUMANG.

52. As a direct and proximate result of the registered owner's negligent entrustment of the Truck to Defendant SUMANG as alleged herein and in other ways to be discovered in this case, Plaintiffs each suffered severe, permanent and disfiguring injuries, has incurred medical, psychiatric, psychological and rehabilitative expenses, has suffered mental and emotional distress and have lost income and earning capacity, and suffered other damages, entitling Plaintiffs to a judgment against the registered owner of the Truck in amounts to be proven at trial.

COUNT IV - NEGLIGENT/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

53. Plaintiffs reallege and incorporate herein by reference all of the previous paragraphs of this complaint as if fully set forth herein.

54. Defendants' actions described above and below were willful, reckless, malicious, outrageous, deliberate, and purposeful. These acts were committed with the intention of inflicting severe emotional distress upon Plaintiffs and/or were done in reckless and/or negligent disregard of the probability of causing Plaintiffs severe emotional distress.

55. As a direct and proximate result of said acts, Plaintiffs were caused to suffer serious, severe and grievous mental and emotional distress, strain, anguish, stress and anxiety, entitling Plaintiffs to a judgment against Defendants in amounts to be proven at trial.

COUNT V - PUNITIVE DAMAGES

56. Plaintiffs reallege and incorporate herein by reference all of the previous paragraphs of this complaint as if fully set forth herein.

57. Defendant SUMANG's actions as alleged herein were willful, reckless, malicious, outrageous, deliberate, and in conscious disregard of the consequences. At the scene of the accident, he told emergency responders, "*Fuck you, I don't give a Fuck.*"

58. As a direct and proximate result of Defendant SUMANG's willful, reckless, malicious, outrageous, deliberate conduct in conscious disregard of the consequences, Plaintiffs are entitled to an award of punitive damages against Defendant SUMANG to punish him and to deter this type of reckless and outrageous conduct.

WHEREFORE, Plaintiffs pray for Judgment in their favor and against Defendants, jointly and severally, as follows:

1. Special damages as shall be proven at trial;
2. General damages as shall be proven at trial;

3. Punitive damages against Defendant SUMANG as shall be proven at trial;

4. Attorney's fees and costs;

5. Prejudgment and post-judgment interest; and

6. Such other and further relief as the Court deems just under the circumstances.

Dated: Honolulu, Hawaii, July 8, 2019.



ROBERT D. KAWAMURA

Attorneys for Plaintiffs
LIANNA MCCURDY and DANIEL
VERDERAME